

| Submitted by | Comments / Feedback On Draft Document Sent to Council on Jan 9, 2015 |
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| Stephanie Westermeier Legal counsel at Saint Alphonsus Health System | <p>Recommends decreased complexity, review for inconsistencies with existing state and federal statutes and care not to impose requirements over and above those applicable to in-person visits.</p> <p>Comments that lines 128-148 either do not seem practical or consistent with requirements for in-person visits and/or may be better addressed in regulation rather than statute.</p> <p>Offers the following language as a possible alternative, still aligning with FSMB, streamlined, and consistent with the spirit of the DRAFT document sent to the Council on Jan 9th:</p> <p>54-5605. Telehealth practice.</p> <ol style="list-style-type: none"> (1) Licensure. A healthcare provider licensed or regulated in Idaho may utilize telehealth in his or her practice as long as the healthcare provider acts within the scope of the healthcare provider's license and/or any applicable laws and regulations. (2) Establishment of a provider-patient relationship. If a healthcare provider does not have an established provider-patient relationship, a provider-patient relationship must be established using synchronous interaction. <u>However, nothing in this act shall prohibit telephone consultations: (a) by a healthcare provider with a patient with whom the healthcare provider has a preexisting provider-patient relationship, or (b) by a healthcare provider with another healthcare provider who has a current provider-patient relationship with that patient, or (c) by a healthcare provider with a patient with whom the healthcare provider does not have a provider-patient relationship, if the healthcare provider is taking call for another provider in the same community who does have a pre-existing provider-patient relationship with that patient.</u> (3) Evaluation and treatment. Evaluation and treatment recommendations made through telehealth must comply with all laws and regulations applicable to in-person encounters, including but not limited to compliance with the community standard of care. (4) Prescribing. A healthcare provider may prescribe within the scope of his or her license and applicable laws and regulations in a synchronous interaction if the prescription drug is not a controlled substance. (5) Medical record documentation and continuity of care. Healthcare providers providing services to a patient using synchronous interaction must generate, maintain and allow patient and provider access to a medical record for each patient consistent with existing laws and regulations. (6) Patient referrals for services. A healthcare provider shall be familiar with or have access to available medical resources, including those in proximity to the patient, in order to make appropriate patient referrals when medically indicated. |

Comment [SC1]: Stephanie recommends further exploration to ensure it is in compliance with state and federal law as well as not in conflict with tele-psychiatric practice in rural areas, e.g.

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| | 54-5606. Rulemaking. Boards regulating healthcare providers licensed under the provisions of Title 54, Idaho Code, may promulgate rules regulating the practice of telehealth pursuant to this chapter consistent with the provisions contained herein. |
| Mark Johnson Idaho Board of Pharmacy | <p>Line 51: Licensure. The practice of telehealth is allowed by a healthcare provider licensed or regulated in Idaho so long as the healthcare provider acts within the scope of services for which the healthcare provider is licensed or regulated and provided such health care provider meets the community standard of care. The practice of telehealth by any healthcare provider is prohibited if the healthcare provider is not in full compliance with this act.</p> <p>Line 61: Establishment of provider-patient relationship.provider and patient if the appropriate steps have been taken as outlined in this paragraph.</p> <p>Lines 66, 67, and 69: Evaluation and treatment.prior to providing treatment, including issuing prescriptions, electronically or otherwise. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same community standard of care as those in traditional (encounter in person) settings. Treatment, including issuing a prescription, based solely on an online questionnaire.....</p> <p>Line 77 and 85: Prescribing. provider shall be allowed to prescribe, dispense, or administer a prescription drug to a patient without conducting an in-personal physical examination only if the following conditions are met:</p> <ul style="list-style-type: none"> a. the healthcare provider is licensed in this state; b. the episode of care meets the community standard of care; c. a relationship has been established between the healthcare provider and the patient by the provider's agreement to undertake diagnosis and treatment of a patient, and the patient's agreement to be treated, whether or not there has been a physical examination or an encounter in-person between the healthcare provider and patient; d. the prescription drug is not a controlled substance. <p>Line 149: 54-5606. Rulemaking. Boards regulating healthcare providers governed by title 54, Idaho Code, shall promulgate rules regulating the practice of telehealth pursuant to this chapter and not inconsistent with the provisions contained herein.</p> |
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Comment [MDJ2]: I think that (1) should be the language that comes after "54-5605, Practice of telehealth". Without this header, there is no link to (2) and so forth. If each of the next subsections have to stand on their own, they each must list telehealth, but they do not. For example, (2) may apply to all prescribers without starting the language with something like "if providing telehealth services".

Comment [MDJ3]: Is the intent of using "or regulated" to give each administrative agency their choice of licensure or just regulation without licensure? As it is currently written either licensure or regulation suffices this statutory requirement.

Comment [MDJ4]: I do not believe "paragraph" to be the appropriate terminology. Is it "subsection" as used in (3) below?

Comment [MDJ5]: The correct term in the Idaho Pharmacy Act is "prescription drug orders", not "prescriptions". There are 3 uses of this term in (3).

Comment [MDJ6]: "electronically or otherwise" is extraneous.

Comment [MDJ7]: How would a telemed provider dispense or administer?

Comment [MDJ8]: Tele-psychologists are already tele-prescribing controlled substances in Idaho. I realize the sensitivity to controlled substances, but is the intent to outlaw current practice?

Comment [MDJ9]: The Board of Pharmacy falls into this description, but I see no need for us to rulemake. This would mandate that we do so. I suggest that "shall" be replaced with "may".

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| <p>Henry DePhillips, MD, FAAFP Teladoc, Inc.</p> | <p>The FSMB’s definition of “telemedicine” states that telemedicine typically involves the application of either secure videoconferencing <u>or</u> audio with store and forward technology. The draft legislation before the Idaho Telehealth Council, however, requires that both audio <u>and</u> visual interaction is required in order to establish an initial provider-patient relationship. We understand that it is the Council’s goal to align with the FSMB as closely as possible and would like to submit the following points to the Council for consideration:</p> <ul style="list-style-type: none"> • Legislation should be technology neutral and should not be unduly prescriptive due to the rapidly changing nature of technology in general, and telehealth technology in particular. • The limited access to broadband connection in rural parts of the state creates a barrier for the use of telemedicine services if it is limited to videoconferencing technology. Access to care is critical to rural and frontier Idaho. • The combination of an audio consultation with store and forward technology means that a physician conducting a consultation has full access to a patient’s medical information during the consultation and is transmitting the record of the encounter to the patient, and potentially to their primary care physician, after the consultation. <p>We would encourage the Council to align with the FSMB by inserting language from the FSMB model policy into the Idaho Telehealth Access Act DRAFT 1/7/15, in line 42, after simultaneously add: “or via audio transmission with asynchronous store and forward transfer.”</p> |
| <p>Becky diVittorio OptumHealth</p> | <p>On line 85: restriction on prescription of controlled substances provides significant limitations for child psychiatry, for example in treating children with ADHD with prescription of stimulants. The FSMB rules do not appear to be that direct but rather point to other regulations that apply.</p> <p>Why is two-way video defined as required? That seems to not be technology agnostic and also more restrictive than FSMB.</p> |
| <p>Bureau of Occupational Licenses (group discussion among various regulating boards)</p> | <p>General: clarification for licensed healthcare providers applicable when treating a patient IN IDAHO at the time of seeking care.</p> <p>Line 51: remove “or regulated” from the language</p> <p>Line 61: this language is not clear</p> <p>Line 77: does not like the terms “dispense or administer”</p> <p>Line 85: concerned that this statute would be more restrictive than current state or federal law for tele-psychiatry</p> |

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| | <p>Lines 145-148: Some regulating boards have not formally adopted nationally recognized standards for their profession. This section may not be needed – doesn’t seem appropriate for statute.</p> <p>Line 149: Would prefer: 54-5606. Rulemaking. Boards regulating healthcare providers licensed under the provisions of Title 54, Idaho Code, shall may promulgate rules regulating the practice of telehealth pursuant to this chapter and not inconsistent consistent with the provisions contained herein.</p> <p>Suggested that “standard of care” language not be used throughout the document but instead referenced a subsection under “Practice of Telehealth”, something along the lines of “Standard of Care. Healthcare providers must provide care as defined by the customs of their profession.” By licensure, it is assumed that one is expected to practice within the standards of their profession so one reference in this statute should be sufficient.</p> <p>Line 51: instead of saying “practice of telehealth” would “utilization of telehealth” be better terminology?</p> <p>Lines 70-72: may want to consider mentioning specialists not licensed in Idaho and when that is allowed</p> <p>General: the scenario of when the patient and provider are in different states, especially in border communities – it is very unclear when healthcare providers must be licensed in other states depending on where the patient is at the time.</p> |
| Nancy Kerr Idaho State Board of Medicine | <p>Lines 75-76: “and is authorized to prescribe <u>prescription</u> (legend) drugs”. Legend drugs require a prescription (sounds less redundant).</p> <p>Line 78: “conducting an in-personal in-person examination”</p> |
| IHA Legislative Policy Committee | <p>Line 114: Medical records. Providers shall generate and maintain an electronic medical record for each patient for whom they provide remote care.</p> |
| Sandra Evans, MAEd, RN, Executive Director Idaho Board of Nursing | <p>On line 6 and 7: delete “...healthcare services provided by...” as unnecessary verbiage.</p> <p>On line 33: Note: “healthcare provider” is defined, however, provider is not although both terms are used in the legislation. Recommend using either “healthcare provider” throughout or changing the definition to include the additional term “provider”.</p> <p>On lines 44 and 48: delete “...whether frontier, rural or urban...” as unnecessary verbiage.</p> <p>On lines 71 and 72: substitute the word “healthcare provider” for the word “prescriber”.</p> <p>On line 74: insert “with prescriptive authority” after the word “provider” and insert “provider-patient” before the word “relationship” and delete “...in which there has been a physical examination or in-person encounter, and is authorized to prescribe prescription drugs pursuant to that healthcare provider’s licensing and regulation, then...” (eliminates verbose, unclear language).</p> <p>On line 79: insert “...to practice” after the word “licensed”.</p> <p>On line 84: add the word “and” and the end of the line.</p> <p>On line 115: substitute the word “telehealth” for the words “remote care”.</p> <p>On line 121: delete “or exceed” as unnecessary.</p> <p>On line 149: substitute “shall” with the word “may”—licensing boards should not be required to promulgate rules, but instead should be authorized to do so as deemed necessary.</p> |

Dr. Achini
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CMO Areas of Concern with Idaho Telehealth Access Act

1/15/15

Given the existing amount of fragmentation in the current health care system, it is important to shape the regulations around the implementation of telemedicine needs to facilitate and/or enhance quality care and certainly not introduce new gaps in the system of care to add to the potential for safety issues

1. Referrals for Emergency Services:

An emergency plan is required and must be provided by the physician to the patient when the care provided using telemedicine technologies indicates that a referral to an acute care facility or ER for treatment is necessary for the safety of the patient. The emergency plan should include a formal, written protocol appropriate to the services being rendered via telemedicine technologies.

Shouldn't any telemedicine service have an emergency plan for the territory they are servicing including:

- **Written awareness of the nearest urgent care and ER covered by the patients plan**
- **Transportation services to ER that care covered by plan**
- **Written awareness of 1 800 contact numbers for patients health plan for authorizations**

- 2.** Written policies and procedures should be maintained at the same standard as traditional face-to-face encounters for documentation, maintenance, and transmission of the records of the encounter using telemedicine technologies. Such policies and procedures should address (1) privacy, (2) health-care personnel (in addition to the physician addressee) who will process messages, (3) hours of operation, (4) types of transactions that will be permitted electronically, (5) required patient information to be included in the communication, such as patient name, identification number and type of transaction, (6) archival and retrieval, and (7) quality oversight mechanisms. Policies and procedures should be periodically evaluated for currency and be maintained in an accessible and readily available manner for review.

Who is responsible for creating the policies and procedures for the implementation of telemedicine services that is the same standard as traditional face to face encounters. Is it :

- **Health Plan?**
- **Provider?**

With this type of approach proposed, there will be variation in policies and procedures based on payers which can lead to confusion, frustration and increase admin cost for providers.

3. Disclosures and Functionality on Online Services Making Available Telemedicine Technologies:

Online services used by physicians providing medical services using telemedicine technologies should clearly disclose:

- Specific services provided;
- Contact information for physician;
- Licensure and qualifications of physician(s) and associated physicians;
- Fees for services and how payment is to be made;
- Financial interests, other than fees charged, in any information, products, or services provided by a physician;
- Appropriate uses and limitations of the site, including emergency health situations;
- Uses and response times for e-mails, electronic messages and other communications transmitted via telemedicine technologies;
- To whom patient health information may be disclosed and for what purpose;
- Rights of patients with respect to patient health information; and
- Information collected and any passive tracking mechanisms utilized.

Shouldn't the disclosure and functionality requirements include a requirement for follow up of care when a prescription has been provided?

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| | Shouldn't the prescriber be accountable for obtaining a ROI, transmission of info to primary doctor and providing a 24/7 call in number for advice if there are side effects prior to visit with primary doctor. Should there be a limitation on the classifications of meds that can be prescribed via a telemedicine visit with a non- established provider? Idaho established providers who are primary care physician should have a wider range for prescribing medication? |
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